Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 621(a)(1) of the	)	MB Docket No. 05-311
Cable Communications Policy Act of 1984 as	)	
amended by the Cable Television Consumer	)	
Protection and Competition Act of 1992	)	

COMMENTS OF THE CITY OF NEW YORK

The City of New York ("City"), hereby submits the following comments in response to the Further Notice of Proposed Rulemaking ("*FNPRM*") released by the Federal Communications Commission ("Commission") in the above captioned proceeding.[1]

Since 1970, the City has been entering into franchise agreements with cable operators. Today, the City has nine cable franchise agreements that together cover the entire City, and one open video system ("OVS") agreement. The franchise agreements are with Time Warner Cable of New York City ("Time Warner) and Cablevision Systems New York City Corporation ("Cablevision").[2] The OVS agreement is with RCN

[1] *See In the Matter of Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, Report and Order and Further Notice of Proposed Rulemaking, MB Docket No. 05-311 (rel. Mar. 5, 2007) ("*March Order*" and "*FNPRM*").

[2] *See* Cable Television Franchise Agreement for the Borough of Manhattan (Southern Manhattan Franchise) Between The City of New York and Time Warner Cable of New York City, a division of Time

Telecom Services of New York, Inc. ("RCN"), with RCN operating as an over builder.[3] The Time Warner and Cablevision franchise agreements will expire in September, 2008, and October, 2008, respectively; while the RCN OVS agreement will expire in December 2007. After reviewing the Commission's *March Order*, the City concludes that, in general, the order does not apply to franchises granted in the State of New York. Because New York State, like Massachusetts, has adopted a state level franchising process, which, among other things, establishes standards and procedures that municipalities must follow[4] with respect to matters such as schedule, deployment and public, educational and governmental channels, and, additionally, requires final approval of any municipal franchise agreement by the State Public Service Commission,[5] the City finds the Commission's *March Order* will as a general matter not be applicable to franchising in New York State.[6]

Nevertheless, out of an abundance of caution, the City submits the following comments. The City supports the comments of the National Association of Telecommunications Officers and Advisors, the National League of Cities, the National Association of Counties, the U.S. Conference of Mayors, the Alliance for Community

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Warner Entertainment Company, L.P., (entered into Sept. 16, 1998) ("Time Warner Agreement") and Cable Television Franchise Agreement for the Borough of Brooklyn Between The City of New York and Cablevision Systems New York City Corporation (entered into Oct. 8, 1998) ("Cablevision Agreement"). The pertinent language in all of the agreements is virtually identical. Parties can obtain copies of the agreements by contacting the Department of Information Technology and Telecommunications at 212-788-6119.

[3] *See* Open Video System Agreement between The City of New York and RCN Telecom Services of New York, Inc. (entered into Dec. 23, 1997) ("OVS Agreement"); *see also* 47 U.S.C. § 573 (outlining procedures for the establishment of an open video system).

[4] *See* N.Y. Public Service Law §§ 211-230.

[5] *See* N.Y. Public Service Law § 215 and § 221.

[6] *See March Order,* at n.2.

Media, and the Alliance for Communications Democracy, filed in response to the *FNPRM*.

The City opposes the *FNPRM*'s tentative conclusion that the rulings made in the *March Order* should apply to incumbent cable operators, whether at the time of renewal of those operators' current franchises, or thereafter.[7] This proceeding is based on Section 621(a)(1) of the Communications Act,[8] and the rulings adopted in the *March Order* are specifically, and entirely, directed at "facilitat[ing] and expedit[ing] entry of new cable competitors into the market for the delivery of video programming, and accelerat[ing] broadband deployment . . . ."[9]

The City disagrees with the rulings in the *March Order*, on the grounds that the Commission lacks the legal authority to adopt them and that such rulings are unnecessary to promote competition, violate the Cable Act's goal of ensuring that a cable system is "responsive to the needs and interests of the local community,"[10] and are in conflict with several other provisions of the Cable Act. Even assuming, for the sake of argument, that the rulings in the Order are valid, they cannot, and should not, be applied to incumbent cable operators. By their terms, the "unreasonable refusal" provisions of Section 621(a)(1) apply to "additional competitive franchise[s]," and not to incumbent cable operators. Incumbent operators are by definition already in the market, and their future franchise terms and conditions are clearly governed by the franchise renewal provisions of Section 626,[11] and not by Section 621(a)(1). The renewal provisions of Section 626,

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[7] *See FNPRM*, at ¶ 140.

[8] *See* 47 U.S.C. § 541(a)(1).

[9] *See March Order* at ¶ 1.

[10] *See* 47 U.S.C. § 521(2).

[11] *See* 47 U.S.C. § 546.

including both the procedural elements (*i.e.*, the contemplated time frames for actions of the respective parties) and the substantive elements (*i.e.*, the standards for determining renewal status, including without limitation, such matters as evaluation by the franchising authority of future cable-related community needs and interests) address the full scope of the franchising authority's role in this area.

The City strongly endorses the *FNPRM*'s tentative conclusion that Section 632(d)(2) bars the Commission from "prempt[ing] state or local customer service laws that exceed the Commission's standards," and from "prevent[ing] LFAs and cable operators from agreeing to more stringent [customer service] standards" than those promulgated by the Commission.[12]

[12] *See FNPRM*, at ¶ 143.

Finally, we note in this connection that the language of Section 632(d)(2) expressly authorizes franchising authorities to establish and enforce the customer service requirements, construction schedules, construction-related performance requirements, etc., "of the cable operator," and does not limit the scope of franchising authority responsibility under this section to the "cable service" of the cable operator.

Respectfully submitted,

/s/

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